

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIRELL FRANCIS BETTIS TRUST and  
KIRELL F. BETTIS-TAYLOR,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE (IRS),  
K. GREEN, and A. RASCHKE,

Defendants.

No: 1:20-cv-00148-NONE-SKO

ORDER DENYING MOTION FOR RELIEF  
FROM JUDGMENT

(Doc. No. 12)

Plaintiff Kirell F. Bettis-Taylor<sup>1</sup>, a state prisoner, is appearing pro se in this civil rights action. On January 29, 2020, plaintiff filed a complaint with the court, but did not file an application to proceed *in forma pauperis* nor did he pay the filing fee.

On February 18, 2020, the court, having concluded that plaintiff is subject to the three strikes provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g), and that he had failed to satisfy the imminent danger exception contained within that provision, ordered plaintiff to pay the \$400.00 filing fee in full. (Doc. No. 3.) Plaintiff was advised that his failure to do so in compliance with the court's order would result in this action being dismissed. (*Id.* at

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<sup>1</sup> Plaintiff's inmate number is T35161. It appears that plaintiff has used more than one name, including Kirell Taylor and Kirell Francis Bettis. *See Bettis v. U.S. Dep't of State*, no. 1:19-cv-02802-UNA (D.D.C.) (Oct. 29, 2019) (noting that plaintiff has filed cases using more than one name).

1 5.) The February 18, 2020 Order was served on plaintiff at his then address of record by U.S.  
2 Mail.

3 Rather than pay the filing fee, plaintiff submitted two motions to proceed *in forma*  
4 *pauperis*, both of which asserted that he was then facing imminent danger of serious physical  
5 injury because he refused to withdraw a staff complaint about an alleged excessive use of force  
6 incident that is mentioned in (although not obviously connected to the primary issues raised in)  
7 his complaint. (Docs. No. 4 & 5.) Because plaintiff had failed to pay the filing fee after having  
8 been warned that failure to do so would result in dismissal of this action and because neither of  
9 his subsequently filed applications to proceed *in forma pauperis* articulated “specific fact  
10 allegations of ongoing serious physical injury, or a pattern of misconduct evidencing the  
11 likelihood of imminent serious physical injury,” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir.  
12 2003), the court dismissed this action due to plaintiff’s failure to obey a court order on March 27,  
13 2020. (Doc. No. 11.) At the same time, the court also denied plaintiff’s request for appointment  
14 of counsel, reasoning that appointment of counsel was inappropriate in light of the nature of  
15 plaintiff’s claims, which the court described as “far-fetched, implausible, and not grounded in  
16 reality or law.” (*Id.* at 2.)

17 On May 10, 2020, plaintiff filed the pending motion for relief from judgment. Federal  
18 Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the district court and  
19 permits a district court to relieve a party from a final order or judgment on grounds of: “(1)  
20 mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3)  
21 fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied . . . or  
22 (6) any other reason justifying relief from the operation of the judgment.” A motion under Rule  
23 60(b) must be made within a reasonable time, in any event “not more than one year after the  
24 judgment, order, or proceeding was entered or taken.” Fed. R. Civ. P. 60(c)(1). Moreover, when  
25 filing a motion for reconsideration, Local Rule 230(j) requires a party to show the “new or  
26 different facts or circumstances claimed to exist which did not exist or were not shown upon such  
27 prior motion, or what other grounds exist for the motion.” Motions to reconsider are committed  
28 to the discretion of the trial court. *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983) (en banc).

1 Plaintiff indicates that he did not receive the court's order requiring him to pay the  
2 required filing fee to proceed with this action due to an apparent problem with his legal mail.  
3 (Doc. No. 12.) Assuming for the sake of this order, without deciding, that the court would have  
4 excused plaintiff's late submission of his filing fee for this reason, plaintiff has still not attempted  
5 to pay the required filing fee in any meaningful way. Rather, plaintiff merely claims to have  
6 made attempts to secure the \$400.00 from persons outside his institution of incarceration but  
7 admits that he has been unable to do so. (*Id.* at 2.) He also claims to have sent a "surety bond" to  
8 the court on March 26, 2020. The court has no record of any such document having been filed  
9 with or received by this court. Even if such a "surety bond" had been received by the court, this  
10 would not have constituted proper payment of the filing fee. *See* Local Rule 135 (g)(4) (requiring  
11 payment by credit card for all electronically filed documents but permitting payment by check or  
12 money order in certain circumstances).

13 Finally, plaintiff asserts that the court should reconsider its prior order requiring him to  
14 pay the filing fee and denying appointment of counsel on his behalf in part, according to plaintiff,  
15 because the court mistakenly construed the nature of his complaint. (Doc. No. 12 at 2-6.) In its  
16 March 27, 2020 order, the court interpreted plaintiff's complaint as asserting that the Internal  
17 Revenue Service owed plaintiff many hundreds of billions of dollars. (Doc. No. 11 at 2.)  
18 Plaintiff now attempts to describe his claims differently, instead asserting that he "clearly claims  
19 the gross income accrued to plaintiff KIRELL FRANCIS BETTIS TRUST for the 2014-2019  
20 taxable years totals: \$347,390,343,333.000," among other things. The court has carefully  
21 reviewed plaintiff's submission and concludes that nothing therein changes the ultimate  
22 conclusions set forth in the court's March 27, 2020 order of dismissal; namely (1) that plaintiff is  
23 subject to the three strikes provision of the PLRA, 28 U.S.C. § 1915(g), due to the qualifying  
24 dismissal of prior lawsuits filed by him, and (2) that appointment of counsel on his behalf is not  
25 appropriate here.

### 26 CONCLUSION

27 In sum, plaintiff was warned on February 18, 2020 that he must pay the \$400.00 filing fee  
28 or face dismissal of this case. Assuming, for purposes of this order only, that plaintiff did not

1 timely receive the court's February 18, 2020 order, he has clearly been advised and known of the  
2 requirement that he pay the filing fee to pursue this action since late March 2020, when he began  
3 to seek assistance from someone to help him pay that required filing fee. Plaintiff has still,  
4 nonetheless, failed to pay the fee. To the extent plaintiff was awaiting ruling on his motion for  
5 reconsideration of the court's order requiring him to pay the fee, that motion for reconsideration  
6 (Doc. No. 12) is DENIED.

7 Out of an abundance of caution, plaintiff will be afforded one final opportunity to pay the  
8 required \$400.00 filing fee. He must do so by an appropriate method of payment within fourteen  
9 days of the date of this order. Unless the filing fee has been received by that date, this case shall  
10 remain closed.

11 IT IS SO ORDERED.

12 Dated: April 26, 2020

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14 UNITED STATES DISTRICT JUDGE